THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NOs. 19107, 19186, 19187, 19401, 19498, 19569, 19574, 19592, 19732, 19840, 19848, 19968 and 19970 OF 2005

Dated 9th September 2005

Between:

P.Rama Rao S/o.P.Venkata Rao,

Aged 42 years, Occu: Public Relations Officer,

Sri Kanakamahalakshmi Ammavari Devasthanam,

Buruupeta, Visakhapatnam. & others

…Petitioners

And

The State of A.P., rep. By its

Principal Secretary to Government (Revenue Endowments),

Secretariat, Hyderabad & others

…Respondents

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COMMON ORDER:

In this batch of writ petitions, the orders passed by the Government of Andhra Pradesh, in exercise of its powers under Section 93 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, for short

“the Act”, in relation to the appointment of different categories of employees, in the temples spread all over the State, as well as the consequential orders passed by the respective religious institutions, are challenged.

The Act provides for regulation and management of religious institutions in the State. One of the important aspects dealt with by the Act, and the Rules made thereunder, is the appointment and promotion of the employees working in the temples, and other religious institutions. They can take place only with the prior approval of the Commissioner of Endowments.

In the recent past, irregularities are said to have been committed in large scale, during the tenure of a Commissioner, between 18.1.2005 and 31.5.2005. Several instances of irregular appointments, promotions, or extension of the benefit of scales of pay, to the employees engaged on contract basis, have come to light. The instances were so large in number, that they have attracted public attention at various levels, for a considerable time.

With a view to undo the irregularities, said to have been committed during the tenure of the said Commissioner, as a preliminary step, the Government issued G.O.Rt.No.1123, Revenue (Endowments.I) Department, dated 6.6.2005, in exercise of its powers under Section 93 of the Act, keeping all the orders passed by the then Commissioner, as well as the consequential proceedings, in abeyance. Thereafter, the Government issued G.O.Rt.No.1422, Revenue (Endowments.I) Department, dated 25.7.2005, canceling all the appointments made on contractual basis. On the same day, separate orders are said to have been issued, suspending various orders passed according permission for promotions and extension of the benefit of scales of pay, or creation of new posts, during the tenure of the said Commissioner. In this batch of writ petitions, all the three categories of persons, *viz.* those a) who were promoted, b) who were appointed against newly created posts, c) who were appointed on contractual basis afresh, and d) those who were extended the benefit of scale of pay, as against their contractual appointments; are present.

Sri Nuty Rama Mohan Rao, learned counsel, led the arguments on behalf of the petitioners. He submits that there was absolutely no basis for the Government, to invoke its powers under Section 93 of the Act, in such a general and vague manner. He contends that even where there exists sufficient factual basis, for invocation of such powers, the Government was expected to put the affected parties, on notice, and to pass reasoned orders, only thereafter. He further contends that in the whole exercise, the principles of natural justice have been observed only in breach. Learned counsel urges that it is impermissible for the Government, or for that matter, any other agency, to cancel the orders of appointment or promotion on mere suspension. His arguments were supplemented by Sri K.V.N.Bhupal, Sri K.R.Prabhakar, Sri S.S.Varma and Sri N.Girugopal.

Learned Government Pleader for Endowments, on the other hand, submits that the Government was compelled to invoke its extraordinary powers, under Section 93 of the Act, having regard to the large scale misuse of powers by the then Commissioner, and with a view to protect the interests of the religious institutions, in the State. He submits that consequent upon the general orders passed by the Government, individual orders have been passed by the concerned religious institutions, giving effect to the same, and in many cases, revisions have been filed, before the Government, against such orders. He contends that the aggrieved parties can certainly put forward their contentions by filing revisions, and that the writ petitions are not maintainable. To the same effect, are the submissions of the learned Standing Counsel for the religious institutions.

Section 93 of the Act confers extraordinary powers, on the Government, to call for the records, and to pass appropriate orders, in relation to any matter covered by the Act. The provision is couched in general terms, and it empowers the Government to annul, or modify the decisions, taken by the religious institutions, if it appears that such orders were not correct, legal or proper. The only restriction is that the Government cannot invoke its powers, in respect of which a suit, or appeal, or a reference, is provided for, under the Act. Proviso to Section 93 mandates that no order shall be passed under that section, prejudicial to the interest of any party, unless an opportunity of making representation is given to them. The Government is also conferred with the power to stay the implementation of the orders, which it

proposes to cancel. Before resorting to the steps under Section 93 of the Act, the Government has to ensure compliance with Section 92 of the Act, i.e. calling for records in the relevant matters.

Even if there existed necessary and factual basis for the Government, to invoke its powers under Section 93 of the Act, it was required to examine the individual cases, and record a definite finding, as to the illegality. Before passing orders dealing with individual or common cases, it ought to have issued notices to the affected parties. Obviously, reeling under heavy pressure and public criticism, the Government has chosen to straight away cancel the orders of appointment, or to keep them under abeyance, by exercising its power under that section. In spite of existence of justification for invoking such power, it is impermissible for the Government to pass orders, without putting the affected parties on notice.

Further, it may not be proper to draw an inference that all the orders passed, during the tenure of an officer, are *per se* void. Much would depend upon the facts and circumstances of each case. In a given case, the individuals may be entitled for the benefit or relief, as of right. Simply because, such benefit was conferred, or relief was granted, or the right was recognized, during the tenure of such officer, the persons so entitled, cannot be penalized. Generalization of matters to such a degree would reduce the entire administrative exercise, to a futility. Any further discussion, on this aspect, is likely to have its impact, on the exercise, that the court intends the Government to undertake.

Having regard to the large scale irregularities that have taken place during the tenure of the erstwhile Commissioner, and taking into account, the interests of the religious institutions across the State, on the one hand, and the rights of the individuals, on the other hand, this Court is of the view that a perfect balance needs to be maintained, in this regard.

For the foregoing reasons, the writ petitions are disposed of, with the following directions:

a. The Government of Andhra Pradesh, in its Revenue (Endowments) Department, shall issue notices immediately to the individuals, such of the writ petitioners, who are affected by the orders in G.O.Ms.No.1422, dated 25.7.2005, or any other orders or memos, canceling the orders of appointment, upgradation, promotions, or extension of the benefit of scales of pay, as the case may be, pointing out the grounds, on which it proposes to cancel, or interfere with such orders.

b. On receiving representations/explanations from the affected persons, in response to the show-cause notices, the Government shall pass appropriate orders, latest by 31.10.2005. In case any of the affected employees do not cooperate with the enquiry, or it becomes impossible for the Government, to pass orders within the stipulated time, it shall be open to the Government, to file an application before this Court, seeking extension of time, in individual cases.

c. Till 31.10.2005, the present state of affairs shall continue. In case no orders are passed by the Government, by that date, the concerned employees shall be entitled for the benefit of appointment, promotion, upgradation, extension of benefit of scale of pay, as the case may be, without prejudice to the right of the Government to proceed further even thereafter..

d. Except in cases, where the appointments were made afresh, during that period, the affected employees shall be relegated to their earlier positions, which they occupied, but for the orders of promotion, upgradation, or extension of benefit of scale of pay, as the case may be. If the orders that were cancelled by the Government were only those under which the tenure of contractual appointments were extended, the relevant contracts shall continue to be in force.

e. It is made clear that the arrangement made in this order shall be confined to those persons, who approached this court by filing writ petition.

There shall be no order as to costs.

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9th September 2005

Note: Issue C.C.in three days.

(B/o)

PAN